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CENTER *for the* STUDY of INTELLIGENCE

10 March 1995

Mr. David Marwell
Executive Director
Assassination Records
Review Board
600 E Street, N.W.
Washington, DC 20004

Dear David,

We appreciate the opportunity to comment on the Assassination Records Review Board's proposed interpretive regulations as published in the Federal Register, February 8, 1995. We recognize the value of providing guidance for those who are responsible for implementing the Assassination Records Collection Act.

Our general view is that the regulations are comprehensive in identifying the range of records that would potentially be relevant to the JFK assassination or the scope of the investigations into the assassination.

In a few sections of the regulations the wording seems somewhat overly broad or the meaning is not clear. Attached for the Board's consideration are comments on these sections. In some parts of the text we suggest possible changes in wording for purposes of clarification. Our Office of General Counsel has provided some legal comments on the scope of the definition, which we have included in the attached.

We would be pleased to discuss these comments at the Board's convenience. It is our intention to continue cooperating fully with the Board and to make every effort to release assassination records held by the Agency.

John F. Pereira
Historical Review Group,
Central Intelligence Agency

Attachments

1. General Comment: The Act authorized the Board to issue interpretive regulations. Interpretive regulations, while entitled to great deference, cannot be inconsistent with the congressional intent to cover only certain specific activities. Rather, they should stay within the clearly articulated definitions provided by Congress. This is particularly important with respect to definition of "assassination records" since the Assassination Records Collection Act (ARCA) has an overriding effect on other statutory grants of power found necessary in the interest of national security, such as the National Security Act's direction that the Director of Central Intelligence protect intelligence sources and methods from unauthorized disclosure. The ARCA provides a statutory standard for protecting or "postponing" intelligence sources and methods that can be protected in "assassinations records." The Review Board is given the ultimate authority to apply that standard, subject to being overridden only by the President. Thus, the ARCA reflects a congressional desire to limit the DCI's authority to protect sources and methods, but only for "assassination records" as ARCA defined it. An interpretive definition by the Board that would sweep in records not covered by the Act, we believe, would exceed the Board's limited rulemaking authority. Thus, the proposed definition should be limited more clearly to those records identified by Congress as "assassination records."

2. Following are comments on specific sections of the Assassination Records Review Board's interpretive regulations, as published in the Federal Register, February 8, 1995.

a. Section 1400.1 Interpretation of Assassination Record

In paragraph (a) the reference to "activities and events that may have led to the assassination--" seems overly broad, and appears to go beyond the limits established in the Assassination Records Collection Act. We believe that it would be helpful to include an articulable standard in this section. The present text would permit inconsistent application of the regulations, which might encourage massive and expensive, additional records searches that are of doubtful value.

The following change is suggested in paragraph (a):

"activities and events that may reasonably be considered to have led to the assassination--"
(This would be consistent with the Act.)

b. Section 1400.2 Interpretation of additional records and information

Paragraph (a) raises a question as to the purpose and definition of "additional records and information." The meaning of the phrase "all documents used--during declassification review of assassination records as well as all other documents--" seems overly broad and unclear. As presently worded, this section would appear to include any document, book, index, record system, etc. regardless of relevance to the assassination or investigations, including for example, legal opinions. We assume that the purpose is to enable the Board to request and review additional records.

We suggest that the section be made more specific, including a clearer statement of the intent. For example, with respect to cryptonyms, codewords, guides, etc. a more precise link to events related to the assassination or to a timeframe could be helpful.

- c. Section 1400.5 Requirement that assassination records be released in their entirety

The introductory paragraph specifies that "no portions of any assassination record shall be withheld--solely on grounds of non-relevance." This appears to open the door for access to entire documents that contain information on sensitive activities even when the documents contain information that is only incidental to the assassination, such as a passing reference to a name. There is a potential risk that sensitive, non-relevant sources and methods would be compromised.

We suggest that the Board consider adding wording to this section that accommodates those instances when there is a need to release ample information from a document to disclose assassination-related material, while still protecting obviously unrelated, sensitive information. The Board, of course, would continue to have access to the entire record.

- d. Section 1400.7 Additional guidance

Paragraph (d) states "any records identified with respect to a particular person also includes any records for that person by any other name, pseudonym, codeword," etc. This appears to require that all records on any individuals who are merely mentioned in an assassination record be made available. We assume that the purpose is more specific i.e., to assure that all files on an individual or activity be made available regardless of the labels on the files. We suggest that the text be modified to reflect this.